72-662

No. 662.

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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1972.

JAN T. BATA, Individually and as a Representative of Jan A. Bata, Deceased,

Petitioner,

v.

CENTRAL PENN NATIONAL BANK OF PHILADELPHIA,

and

THOMAS J. BATA,

Respondents.

Petition for a Writ of Certiorari to the Supreme Court of the Commonwealth of Pennsylvania.

BRIEF IN OPPOSITION FOR RESPONDENT THOMAS J. BATA.

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JAN T. BATA, INDIVIDUALLY AND AS A REPRESENTATIVE OF JAN A. BATA, DECEASED,

Petitioner,

v.

CENTRAL PENN NATIONAL BANK OF PHILADELPHIA,[1]

AND

THOMAS J. BATA,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF PENNSYLVANIA.

BRIEF IN OPPOSITION FOR RESPONDENT THOMAS J. BATA.

OPINIONS BELOW.

The petition relates only to the most recent opinion of the Court of Common Pleas of Philadelphia County in this

1. Respondent Central Penn National Bank of Philadelphia is the stakeholder of an escrow deposit which is subject to disposition in this action. It has taken no position in this dispute between the petitioner and the individual respondent.

action which was filed on October 5, 1971 and is unreported (App. A to Petition, pp. 36b-49b).

The petition is similarly directed only to the most recent opinion of the Supreme Court of Pennsylvania in this action which was entered on June 28, 1972, with reargument denied on August 4, 1972, and is reported at 448 Pa. 355, 293 A. 2d 343 (1972) (App. A to Petition, pp. 1b-26b).[2]

JURISDICTION.

Jurisdiction is sought to be invoked pursuant to Section 1257(3) of the Judicial Code (28 U. S. C. § 1257(3)), but there is no jurisdiction to review the judgment below since the Trial Court's action in granting permission to amend the pleadings to conform to the proofs, and in granting supplementary relief based on such proofs, raised no substantial Federal question.

THE QUESTIONS PRESENTED.

In the course of the proceedings below relating to the enforcement by the State Court of its prior judgment and decree directing specific performance of a comprehensive settlement agreement between the parties,[3] petitioner opposed respondent's motion to amend his pleadings to reflect

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2. Various of the earlier opinions rendered in the twenty-five years of litigation between the parties are referred to and cited in the opinion below of the Supreme Court of Pennsylvania. See App. A to Petition, pp. 1b-14b.

3. The decree ordering performance of the comprehensive settlement agreement was entered on October 18, 1965 by the Court of Common Pleas of Philadelphia County. It was affirmed by the Supreme Court of Pennsylvania. *Bata v. Central Penn National Bank*, 423 Pa. 373, 224 A. 2d 174 (1966), *cert. denied* 385 U. S. 1007 (1967).

the proofs already presented relating to petitioner's continued violation of the settlement in defiance of the judgment and decree on the ground, among others, that to permit the amendment without reopening all the prior adjudications between the parties by the Courts of Pennsylvania would violate petitioner's right to due process under the United States Constitution as assured to a Brazilian national by treaty between the United States and Brazil. (R. 1163 and petitioner's brief in the Trial Court of July 5, 1971). This was the only purported Federal question raised by petitioner in the State courts.

The questions thus presented by the petition are:

> When a Pennsylvania court has entered a judgment and a decree directing specific performance of a comprehensive settlement agreement which terminated fifteen years of litigation between the parties, and proofs are received in evidence before the court showing that one of the parties is seeking by contemptuous conduct and other means to frustrate and to render ineffectual the court's judgment and decree,
>
> (1) may the Pennsylvania court permit an amendment of the pleadings to conform to such proofs in accordance with Rule 1033 of the Pennsylvania Rules of Civil Procedure and thereafter, following the filing of an answer to such amendment, upon the plaintiff's motion for summary judgment thereon, grant supplementary relief in accordance with Rule 1035 of the Pennsylvania Rules of Civil Procedure to render the court's judgment and decree complete and effective?
>
> (2) does this action by the Pennsylvania court present a substantial Federal question for review by this Court?

STATUTE INVOLVED.

Section 1257(3) of the Judicial Code (28 U. S. C. § 1257(3)) pertaining to the jurisdiction of the Court reads in relevant part:

> "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> • • •
>
> "(3) By writ of certiorari . . . where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of or commission held or authority exercised under, the United States."

STATEMENT.

Petitioner [4] seeks review in this Court of so much of the judgment of the Supreme Court of Pennsylvania entered on June 28, 1972 as affirmed the decree of the Court of Common Pleas of Philadelphia County entered on October 5, 1971 granting summary judgment to respondent Thomas J. Bata on his amended complaint of March 16, 1970 and ordering supplementary relief in favor of respondent further enforcing the comprehensive settlement agreement entered into between the parties in March 1962.

On March 27, 1962, in Philadelphia, Pennsylvania, Thomas J. Bata and Jan A. Bata concluded and substantially performed a comprehensive settlement agreement by which they compromised all their outstanding claims, both against each other and respecting the ownership and control of the Bata shoe companies. This comprehensive settlement, which the parties agreed would be governed by

4. As in the Petition, we refer for convenience both to Jan A. Bata, who died in August, 1965, and to his son Jan T. Bata, who was duly substituted as a party defendant to represent his father's estate, as "petitioner", and to respondent Thomas J. Bata, as "respondent".

Pennsylvania law, terminated fifteen years of continuous litigation between the parties in the courts of New York, Delaware, Switzerland and various other jurisdictions,[5] and the parties expressly undertook not to relitigate any of their claims thereafter.

Substantially all of the transactions contemplated by the comprehensive settlement agreement were either carried out before March 27, 1962 or were accomplishd shortly thereafter.[6] However, certain additional action relating to

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5. A summary of the prior litigation is set forth in Appendix B to the Brief in Opposition to petitioner's petition for certiorari filed in this action in 1966 (No. 1113, Oct. Term, 1966), pp. B1-B3. These suits, litigating the question of ownership and control of the Bata shoe companies, had resulted in three final judgments in respondent's favor by the courts of New York, Delaware and Switzerland declaring that respondent and his mother were entitled to the property in dispute. *Bata v. Chase Safe Deposit Co.*, 99 N. Y. S. 2d 535 (Sup. Ct. 1950), *aff'd sub nom. Bata v. Bata*, 279 App. Div. 182, 108 N. Y. S. 2d 659 (1951), *aff'd*, 306 N. Y. 96, 115 N. E. 2d 672 (1953); *Bata v. Jucker*, District Court of Zurich, Civil Action No. 1435-1947 (1951), *aff'd*, Superior Court of the Canton of Zurich (1957); *Bata v. Hill*, 139 A. 2d 159 (Del. Ch. 1958), *aff'd sub nom. Bata v. Bata*, 163 A. 2d 493 (Del. 1960), *reargument denied*, 170 A. 2d 711 (1961), *cert. denied*, 366 U. S. 964 (1961) (No. 996, Oct. Term 1960).

In addition, petitioner's assignee commenced another action after the execution of the settlement agreement, and in direct violation of petitioner's settlement undertakings, in the District of Columbia, which resulted in a judgment against petition's assignee. *Nash v. N. V. Nederlandsche Schoen-en Lederfabrieken Bata-Best* (Civ. 723-63, D. D. C. 1963), *aff'd* (D. C. Cir. 1964), *cert. denied*, 379 U. S. 963 (1965).

6. The performance by the parties in March 1962 of their agreement included:

(a) the immediate payment of $2,700,000 cash by respondent to petitioner;

(b) the delivery by the parties to each other of stock certificates and instruments of assignment of interests in various Bata companies;

(c) the exchange of comprehensive general releases;

(d) the exchange of more than 150 special releases; and

(e) the delivery of stipulations and consents for the termination of each of the thirteen lawsuits then pending between the parties.

the termination of an action pending in the High Court of Justice in London and to the affairs of the Dutch Bata company, which was to continue with mixed ownership, remained to be taken. Funds were deposited in escrow by the respondent with the Central Penn National Bank of Philadelphia and were to be paid over to Jan A Bata only after these remaining actions were taken. Despite his express obligations under the comprehensive settlement agreement to take these actions, Jan A. Bata refused to do so.

The instant action was brought in the Philadelphia Court of Common Pleas by respondent in July 1963 to require the completion of performance by Jan A. Bata of his obligations under the comprehensive settlement agreement. After extended proceedings before the Trial Court, judgment on the pleadings was granted to respondent and on October 19, 1965 a decree was entered by the Philadelphia Court of Common Pleas affirming the validity and binding effect of the comprehensive settlement agreement and directing petitioner to cooperate in the termination of the English action and to take certain actions relating to the Dutch Bata company. This decree was affirmed by the Pennsylvania Supreme Court on November 15, 1966 (423 Pa. 373, 224 A. 2d 174) and this Court denied certiorari on April 17, 1967 (386 U. S. 1007).

Petitioner refused to obey the decree of the Pennsylvania courts and to complete his performance of the settlement agreement. Respondent was therefore obliged to prosecute further proceedings in the Philadelphia Court of Common Pleas to compel compliance with the Court's decree. Upon petitioner's continued refusal to obey the further orders of the Philadelphia court, directing petitioner to carry out the decree forthwith, petitioner was found to be in contempt of court on August 10, 1967 and again on November 17, 1967, and these findings were affirmed

by the Supreme Court of Pennsylvania on February 10, 1969 (433 Pa. 284, 249 A. 2d 767). Thereafter the Philadelphia Court of Common Pleas awarded damages to the Commonwealth of Pennsylvania and to respondent for the injuries arising out of petitioner's contemptuous conduct.

Meanwhile, petitioner was taking actions in Holland and in Switzerland in an attempt to nullify the Pennsylvania Courts' decree. Respondent presented proofs to the Philadelphia court of such actions and was granted leave to amend his complaint to include a prayer for supplementary relief directed against this conduct of petitioner.

The portion of the judgment below for which petitioner now seeks review specifically enjoins petitioner from continuing his actions in Holland and in Switzerland attempting to nullify portions of the comprehensive settlement agreement and the Pennsylvania courts' decree. It further enjoins petitioner from instituting any other court proceedings in violation of the comprehensive settlement agreement of March 1962.

REASONS FOR DENYING THE PETITION.

I.

The decision turns on the unique facts of this extended private litigation and is without constitutional or precedential significance. No other litigants will be in any way affected by the judgment below.

II.

The Pennsylvania courts acting in accordance with the Pennsylvania Rules of Civil Procedure permitted an amendment of the pleadings and, in the absence of a substantial issue of fact, granted summary judgment to respondent and awarded the supplemental relief prayed for in the amended complaint. No important Federal question is raised by this decision below.

III.

An examination of the voluminous record in these proceedings, which occupies an entire book shelf, discloses that petitioner has been accorded every opportunity by the courts of Pennsylvania to present any argument that the ingenuity of counsel could devise over a period of nine years in the face of petitioner's continuing refusal to carry out the balance of the comprehensive settlement agreement and despite his contumacious conduct. Petitioner's totally unsubstantiated assertions of a denial of due process of law disregard the history of these proceedings before the Pennsylvania courts and provide no basis for granting a writ of certiorari.

CONCLUSION.

The petition for a writ of certiorari to the Supreme Court of the Commonwealth of Pennsylvania should be denied.

Respectfully submitted,

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